

ATTACHMENT B

STANDARD PROVISIONS

1. FEDERAL NPDES STANDARD PROVISIONS [40 CFR 122.41]

- (a) *Duty to comply* [40 CFR 122.41(a)]. The permittee must comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the Order has not yet been modified to incorporate the requirement.
- (1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the Order has not yet been modified to incorporate the requirement.
- (2) The CWA provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The CWA provides that any person who negligently violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
- (3) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

- (b) *Duty to reapply* [40 CFR 122.41(b)]. If the permittee wishes to continue an activity regulated by this Order after the expiration date of this Order, the permittee must apply for and obtain a new order.
- (c) *Need to halt or reduce activity not a defense* [40 CFR 122.41(c)]. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.
- (d) *Duty to mitigate* [40 CFR 122.41(d)]. The permittee shall take all reasonable steps to minimize or prevent any discharge or prevent any discharge or sludge use or disposal in violation of this Order which has a reasonable likelihood of adversely affecting human health or the environment.
- (e) *Proper operation and maintenance* [40 CFR 122.41(e)]. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the discharger only when the operation is necessary to achieve compliance with the conditions of this Order.
- (f) *Permit actions* [40 CFR 122.41(f)]. This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- (g) *Property rights* [40 CFR 122.41(g)]. This Order does not convey any property rights of any sort or any exclusive privilege.
- (h) *Duty to provide information* [40 CFR 122.41(h)]. The permittee shall furnish to the Director, within a reasonable time, any information which the SDRWQCB may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. The permittee shall also furnish to the SDRWQCB upon request, copies of records required to be kept by this Order.
- (i) *Inspection and entry* [40 CFR 122.41(i)]. The permittee shall allow the SDRWQCB, or an authorized representative (including an authorized contractor acting as a representative of the SDRWQCB or EPA), upon presentation of credentials and other documents as may be required by law, to:
 - (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Order;
 - (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;
 - (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - (4) Sample or monitor at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the CWA, any substances or parameters at any location.
- (k) *Signatory requirement* [40 CFR 122.41(k)]
 - (1) All applications, reports, or information submitted to the SDRWQCB shall be signed and certified (see 40 CFR 122.22)

- (2) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this Order, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(l) *Reporting requirements* [40 CFR 122.41(l)]

- (1) *Planned changes.* The permittee shall give notice to the SDRWQCB as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
- i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or
 - ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants, which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1).
 - iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing Order, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- (2) *Anticipated noncompliance.* The permittee shall give advance notice to the SDRWQCB of any planned changes in the permitted facility or activity, which may result in noncompliance with permit requirements.
- (3) *Transfers.* This permit is not transferable to any person except after notice to the SDRWQCB. The SDRWQCB may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory.)
- (4) *Monitoring reports.* The applicable provisions from 40 CFR 122.41(l)(4) are contained in the Monitoring and Reporting Program for this Order.
- (5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (6) *Twenty-four hour reporting.*
- i) The permittee shall report any noncompliance, which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - ii) The following shall be included as information, which must be reported within 24 hours under this paragraph.

- (A) Any unanticipated bypass which exceeds any effluent limitation in the Order (See 40 CFR 122.41(g)).
- (B) Any upset which exceeds any effluent limitation in the Order.
- (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the SDRWQCB in the permit to be reported within 24 hours. (See 40 CFR 122.44(g)).

iii) The SDRWQCB may waive the written report on a case-by-case basis for reports under paragraph (1)(6)(ii) of this section if the oral report has been received within 24 hours.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (1)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6) of this section.

(8) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the SDRWQCB, it shall promptly submit such facts or information.

(m) *Bypass* [40 CFR 122.41(m)]

(1) Definitions

- i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
- ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations of this Order or the concentrations of pollutants set forth in Ocean Plan Table A or Table B to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this provision.

(3) Notice

- i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.
- ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (1)(6) of this section (24-hour notice).

(4) Prohibition of Bypass

i) Bypass is prohibited, and the SDRWQCB may take enforcement action against the permittee for bypass, unless:

- (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

- (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The permittee submitted notices as required under paragraph (m)(3) of this section.
- ii) The SDRWQCB may approve an anticipated bypass, after considering its adverse effects, if the SDRWQCB determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.
- (n) *Upset* [40 CFR 122.41(n)]
- (1) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based effluent limitations because of factors beyond the reasonable control of the discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
 - (2) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
 - (3) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - i) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - ii) The permitted facility was at the time being properly operated;
 - iii) The permittee submitted notice of the upset as required in section (1)(6)(ii)(B) of this section (24-hour notice); and
 - iv) The permittee complied with any remedial measures required under paragraph (d) of this section.
 - (4) Burden of Proof. In any enforcement proceeding the discharger seeking to establish the occurrence of an upset has the burden of proof.

2. SIGNATORY REQUIREMENTS [40 CFR 122.22]

- (a) *Applications* [40 CFR 122.22(a)(3)]. All applications shall be signed by either a principal executive officer or ranking elected official.
- (b) *Reports* [40 CFR 122.22(b)]. All reports required by this Order, and other information requested by the SDRWQCB shall be signed by a person described in paragraph a. of this reporting requirement, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described in section (a) above;
 - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and,
 - (3) The written authorization is submitted to the SDRWQCB.
- (c) *Changes to authorization.* If an authorization under paragraph (b) of this reporting requirement is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph b. of this reporting requirement must be submitted to the SDRWQCB prior to or together with any reports, information, or applications to be signed by an authorized representative.
- (d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3. ADDITIONAL STANDARD PROVISIONS

- (a) *Municipal separate storm sewer systems* [40 CFR 122.42(c)]. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:
- (1) The status of implementing the components of the storm water management program that are established as permit conditions;
 - (2) Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with 40 CFR 122.26(d)(2)(iii); and
 - (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and 40 CFR 122.26(d)(2)(v);
 - (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;
 - (5) Annual expenditures and budget for year following each annual report;
 - (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; and
 - (7) Identification of water quality improvements or degradation.
- (b) *Storm water discharges* [40 CFR 122.42(d)]. The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7) shall require compliance with the conditions of

the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

- (c) *Discharge is a privilege* [CWC section 13263(g)]. No discharge of waste into the waters of the State, whether or not such discharge is made pursuant to waste discharge requirements, shall create a vested right to continue such discharge. All discharges of waste into waters of the State are privileges, not rights.
- (d) *Review and revision of Order* [CWC section 13263(e)]. Upon application by any affected person, or on its own motion, the SDRWQCB may review and revise this permit.
- (e) *Termination or modification of Order* [CWC section 13381]. This permit may be terminated or modified for causes, including, but not limited to, all of the following:
 - (8) Violation of any condition contained in this Order;
 - (9) Obtaining this Order by misrepresentation, or failure to disclose fully all relevant facts.
 - (10) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
- (f) *Transfers*. When this Order is transferred to a new owner or operator, such requirements as may be necessary under the CWC may be incorporated into this Order.
- (g) *Conditions not stayed*. The filing of a request by the permittee for modification, revocation and reissuance, or termination of this Order, or a notification of planned change in or anticipated noncompliance with this Order does not stay any condition of this Order.
- (h) *Availability*. A copy of this Order shall be kept at a readily accessible location and shall be available to on-site personnel at all times.
- (i) *Duty to minimize or correct adverse impacts*. The permittees shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this Order, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.
- (j) *Responsibilities, liabilities, legal action, penalties* [CWC sections 13385 and 13387]. The Porter-Cologne Water Quality Control Act provides for civil and criminal penalties comparable to, and in some cases greater than, those provided for under the CWA.

Nothing in this Order shall be construed to protect the discharger from its liabilities under federal, state, or local laws.

Except as provided for in 40CFR 122.41(m) and (n), nothing in this Order shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

Nothing in this Order shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the discharger is or may be subject to under Section 311 of the CWA.

Nothing in this Order shall be construed to preclude institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the CWA.

- (k) *Noncompliance.* Any noncompliance with this Order constitutes violation of the CWC and is grounds for denial of an application for modification of the Order (also see 40 CFR 122.41(a).
- (l) *Director.* For purposes of this Order, the term “Director” used in parts of 40 CFR incorporated into this Order by reference and/or applicable to this Order shall have the same meaning as the term “SDRWQCB” used elsewhere in this Order, except that in 40 CFR 122.41(h) and (I), “Director” shall mean “SDRWQCB, SWRCB, and EPA.”
- (m) The SDRWQCB has, in prior years, issued a limited number of individual NPDES permits for non-storm water discharges to MS4s. The SDRWQCB or SWRCB may in the future, upon prior notice to the Permittee(s), issue an NPDES permit for any non-storm water discharge (or class of non-storm water discharges) to a MS4. Permittees may prohibit any non-storm water discharge (or class of non-storm water discharges) to a MS4 that is authorized under such separate NPDES permits.
- (n) *Effective date.* This Order shall become effective on the date of its adoption provided the EPA has no objection. If the EPA objects to its issuance, this Order shall not become effective until such objection is withdrawn. This Order supersedes Order No. R9-98-02 upon the effective date of this Order.
- (o) *Expiration.* This Order expires on **[5 years from the date of adoption]**.
- (p) *Continuation of expired order* [23 CCR 2235.4]. After this Order expires, the terms and conditions of this Order are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on the continuation of expired permits (40 CFR 122.6) are complied with.
- (q) *Applications.* Any application submitted by a permittee for reissuance or modification of this Order shall satisfy all applicable requirements specified in federal regulations as well as any additional requirements for submittal of a Report of Waste Discharge specified in the CWC and the CCR.
- (r) *Confidentiality.* Except as provided for in 40 CFR 122.7, no information or documents submitted in accordance with or in application for this Order will be considered confidential, and all such information and documents shall be available for review by the public at the SDRWQCB office.
- (s) *Severability.* The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
- (t) *Report submittal.* The discharger shall submit reports and provide notifications as required by this Order to the following:

NORTHERN WATERSHED PROTECTION UNIT
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 SKY PARK COURT, SUITE 100
SAN DIEGO CA 92123-4340
Telephone: (858) 268-5363 Fax: (858) 571-6972

EUGENE BROMLEY
US ENVIRONMENTAL PROTECTION AGENCY
REGION IX
PERMITS ISSUANCE SECTION (W-5-1)

75 HAWTHORNE STREET
SAN FRANCISCO CA 94105

Unless otherwise directed, the discharger shall submit one hard copy for the official record and one electronic copy of each report required under this Order to the SDRWQCB and one hard copy to the EPA.